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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")¹ hereby submits these Reply Comments with respect to the Memorandum Opinion and Order ("Order") and Further Notice of Proposed Rulemaking ("Further Notice") adopted by the Commission on October 22, 1998 in the above-captioned proceeding.²

In its opening comments, PCIA endorsed the adoption of a safe harbor percentage mechanism for making interstate allocations for purposes of universal service calculations,

¹ PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As an FCC-appointed frequency coordinator for the Industrial/Business Pool frequencies below 512 MHz, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 98-278 (rel. Oct. 26, 1998) (Memorandum Opinion and Order and Further Notice of Proposed Rulemaking ("Order" and "Further Notice").

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subject to the caveat that use of the prescribed percentages be truly optional, *i.e.*, that a wireless carrier may either use the safe harbor percentages or its own factor determined by its individualized corporate system. The opening comments filed in response to the *Further Notice* provide substantial support for PCIA's position, underscoring the fact that the FCC's approach to identifying interstate revenues must be simple and straightforward and afford carriers flexibility when necessary.

I. THE COMMENTS REVEAL SUBSTANTIAL SUPPORT FOR THE ADOPTION OF OPTIONAL SAFE HARBOR PERCENTAGES FOR USE IN REPORTING WIRELESS SERVICES' INTERSTATE ALLOCATIONS

In the *Further Notice*, the Commission tentatively concluded that it should establish a fixed percentage of end-user revenues to be reported as "interstate" by wireless telecommunications providers on their Universal Service Worksheets.³ Under this mechanism, carriers would be able to calculate their universal service contributions simply by applying the safe harbor percentage to their total revenues derived from wireless services to determine the interstate revenue base. The FCC also suggested that carriers be allowed the option of demonstrating to the Commission, using its own data, that its actual level of interstate traffic differs from the safe harbor factor. PCIA, joined by most other commenters, supports this approach. The record demonstrates that access to truly optional, Commission-defined safe harbor allocations will be a beneficial option for CMRS carriers, their customers, and the Commission.

³ See *Further Notice*, ¶ 18.

A. The Record Supports Adoption of Safe Harbor Percentages That Are Not Mandatory.

A wide cross-section of commenters, including wireless and wireline carriers, support the Commission's proposal to make available safe harbor percentages for wireless carriers that reasonably approximate the average interstate portion of total wireless revenues.⁴ These parties explained that the proposed mechanism would be simple to follow and to administer, and would be markedly less problematic than the current "good faith" approach. In particular, Nextel explained that the safe harbor proposal "meets the administrative simplicity objective, because a carrier will face new administrative costs only if it determines that the benefits of doing a special study exceed the costs."⁵ Commenters also recognized that, for those carriers that choose to rely on the Commission's safe harbor percentages, this approach would provide them with greater certainty and allow carriers to forecast more accurately the relative size of their universal service contributions.⁶ Availability of this option would be particularly useful for smaller and mid-sized carriers that may have more limited resources with which to conduct detailed traffic studies or otherwise measure the actual composition of their traffic.

It was widely agreed that the existing methodology is flawed and is not a viable long-term solution.⁷ Sprint PCS, for example, explained that "the limited experience with universal

⁴ See, e.g., PCIA Comments at 5-6; AT&T Comments at 3-5; Bell Atlantic Comments at 2-4; CTIA Comments at 3-6; GTE Comments at 6-10; Nextel Comments at 6-8; Omnipoint Comments at 2-4; SBC Comments at 2-4; Sprint PCS Comments at 3-4; USTA Comments at 2.

⁵ See Nextel Comments at 7; see also GTE Comments at 6 ("the safe harbor mechanism will allow wireless carriers to avoid expending resources on measurement, if they choose not to do so"); Sprint PCS Comments at 4-5.

⁶ See, e.g., Nextel Comments at 7 ("provides greater certainty to CMRS carriers").

⁷ See *id.* at 6 ("experience has shown that the problems with the current reporting system for CMRS are intractable"); CTIA Comments at 3; Sprint PCS Comments at 3.

service reporting . . . informs that a . . . good faith reporting model will likely result in competitive inequities and could result in the distortion of competitive markets.”⁸ Indeed, only BellSouth urged the Commission to revert to the unstructured and unpredictable “good faith” approach -- and only on a temporary basis, until the Commission resolves other pending questions relating to universal service.⁹ PCIA submits that there is no good reason to go back, even temporarily, to a mechanism that the Commission recognizes as flawed.¹⁰

As noted above, the majority of commenting parties agree that the FCC should adopt a safe harbor percentage as well as allow carriers the option of reporting a different figure if that figure is well-documented. There was little consensus among those parties presenting alternative views. Ameritech suggested that wireless carriers should not be allowed to use “safe harbor” percentages, but instead should be forced to conduct periodic traffic studies to determine the jurisdictional nature of their customers’ calls.¹¹ Several commenters, including PCIA, urged the Commission not to adopt a mandatory mechanism based exclusively on such studies, which may be complicated and costly for many carriers. Sprint PCS, for example, explained that such an approach fails the Commission’s stated goals of ensuring administrative simplicity and competitive neutrality (because wireline carriers are not similarly required to implement such burdensome tracking systems).¹²

Also, PCIA notes that no commenter endorsed the adoption of a fixed per-line assessment, an option explicitly raised in the *Further Notice*, and opposed by PCIA in its

⁸ Sprint PCS Comments at 3.

⁹ See BellSouth Comments at 7.

¹⁰ See *Further Notice*, ¶ 14.

¹¹ See Ameritech Comments at 2.

¹² See Sprint PCS Comments at 3-4.

comments.¹³ CTIA recognized that such an approach would be difficult to administer with respect to calling plans that are not billed on a monthly basis, such as various “pre-paid” plans.¹⁴ GTE pointed out that a flat rate regime for wireless carriers, unless also applied to the wireline industry, would violate the principle of competitive neutrality.¹⁵

Comcast alone supports a fixed charge, advocating that a single, uniform charge be assessed on all wireless carriers on a per-subscriber basis (as opposed to a fixed charge per voice grade line).¹⁶ Despite Comcast’s claims that its plan would “foster predictability and competitive neutrality,” PCIA believes that a per-subscriber fee in fact is not equitable under the federal universal service policies. There is no necessary relationship between number of subscribers and a carrier’s revenues or the level of its interstate traffic, both touchstones of federal universal service policy. Rather than force all wireless carriers into the same mold, the Commission’s policies must accommodate the different competitive situations of industry participants.

Some commenters suggested that the use of fixed percentages is arbitrary and inequitable, as carriers’ actual distribution of interstate and intrastate traffic may vary widely when compared to other carriers.¹⁷ As discussed below, this concern can readily be addressed by the Commission by insuring that the safe harbor percentages are truly optional, and that carriers are free to rely on their own data to calculate different percentages.

¹³ See PCIA Comments at 6.

¹⁴ See CTIA Comments at 8.

¹⁵ See GTE Comments at 10.

¹⁶ See Comcast Comments at 14-16.

¹⁷ See, e.g., NTCA Comments at 3-4.

B. The Safe Harbor Mechanism Must Be Truly Optional.

Commenters supporting the adoption of a safe harbor percentage approach unanimously argued that such a mechanism *must* allow individual carriers the option of reporting a different percentage when their service offerings differ from the established norms.¹⁸ Safe harbor percentages, while administratively convenient, are by nature rough estimates. As PCIA noted in its comments, it is likely that a number of wireless telecommunications providers, especially small, local carriers, will have interstate allocations that differ significantly from the safe harbor percentages. To protect the rights of carriers whose customers do not make a large number of interstate calls, such carriers must be allowed to demonstrate that their actual traffic varies from the safe harbor levels. Indeed, it would violate the principle of competitive neutrality to permit a wireline carrier to make such a showing (probably in reliance on its required books of account), but treat a similarly situated wireless carrier as though it had a much higher level of interstate usage.

PCIA agrees with those commenters that urge the Commission not to require carriers using different percentage figures to seek a waiver or subject these carriers to rigid or burdensome rules governing the process by which they may use an alternative allocation. For example, AT&T argued that “the Commission should not impose a ‘compelling evidence’ or other unduly burdensome evidentiary standard” on carriers that decide to rely on data rather than use the safe harbor percentages.¹⁹ PCIA agrees with AT&T that such a requirement could create

¹⁸ See PCIA Comments at 7-9; AT&T Comments at 3; Bell Atlantic Comments at 4; Comcast Comments at 27; CTIA Comments at 4; GTE Comments at 6; MACtel Comments at 4; Nextel Comments at 7; Omnipoint Comments at 4; SBC Comments at 2; Sprint PCS Comments at 5-6; USTA Comments at 2.

¹⁹ AT&T Comments at 4.

a “*de facto* obligation to use the Commission’s fixed percentages.”²⁰ Also, SBC suggested that carriers be allowed to demonstrate a lower interstate traffic level through the use of traffic studies or other documentation.²¹ Indeed, carriers should be given sufficient flexibility to develop methods of tracking and measuring calls that are compatible with their existing systems and software.²² The Commission should not *mandate* the use of a single methodology, such as the jurisdictional tracking system employed by AirTouch for the purpose of allocating revenues for tax purposes. As BellSouth notes, this system may be tremendously expensive to implement for any given carrier.²³

Furthermore, carriers employing an interstate allocation different than the safe harbor percentage should not be required to file an affirmative waiver request. Rather, such carriers should indicate the interstate allocation percentage on Form 457. Upon review, the Universal Service Fund Administrator or the Commission could request supporting documentation in appropriate cases. Requiring an affirmative waiver showing would add to the cost of using an individualized methodology, thus making the safe harbor percentages less of an option and more of a flat requirement. Indeed, as MACtel points out, smaller carriers operating in rural or insular areas may well specify an alternative percentage, and they likely will have limited resources available for complying with additional regulatory requirements.²⁴ Further, PCIA respectfully submits that a waiver requirement would add to the responsibilities of an already overburdened USAC staff. With the goal of using as much of the collected funds as possible on actual

²⁰ *Id.* at 5.

²¹ SBC Comments at 3.

²² *See* PCIA Comments at 8.

²³ *See* BellSouth Comments at 5.

²⁴ *See* MACtel Comments at 3; *see also* Bell Atlantic Comments at 5, n.4.

universal service needs, why create an unnecessary requirement, the cost of which could be better directed elsewhere?

C. The Commission Should Not Adopt a Uniform Percentage for All Wireless Services.

Two parties urged the Commission to adopt a single safe harbor percentage for all wireless services.²⁵ Based on the information available to date, PCIA does not believe such an approach effectively recognizes the differences in general interstate usage levels among the different categories of wireless service.²⁶ The *Further Notice* proposals reflect the Commission's findings about the differences in interstate usage. Arguments that propose a unitary safe harbor percentage do not adequately explain why these differences should be ignored.

D. The Safe Harbor Mechanism Must Be Direct and Simple for Carriers To Employ and the Commission To Administer.

In its opening comments, PCIA stressed the importance of having a regulatory mechanism that is straightforward and easy to apply.²⁷ Indeed, for those carriers choosing to use the safe harbor percentages, a primary advantage would be the ease of use and the ability to minimize regulatory costs.

Comcast, on the other hand, has proposed a complicated safe harbor mechanism, under which wireless carriers would be required to file a separate Form 457 for each MTA in which they operate.²⁸ An MTA-by-MTA filing requirement would impose a tremendous new burden on wireless carriers. As noted by Omnipoint, “[r]equiring carriers to separate out their interstate

²⁵ See, e.g., Bell Atlantic Comments at 2-3; Omnipoint at 3-4.

²⁶ See PCIA Comments at 10-12.

²⁷ See *id.* at 7.

²⁸ See Comcast Comments at 28.

charges differently for each MTA they provide services in would only provide further complication and increase administrative costs.”²⁹ Moreover, this requirement would consume additional Commission resources by significantly increasing the number of Form 457 Worksheets to be processed. Also, Nextel recognizes that “[r]equiring reporting and contribution on [an MTA-by-MTA] basis would be an unworkable waste of carriers’ resources. Nextel’s digital wireless operations, for example, are not licensed on an MTA basis and do not operate using MTA boundaries.”³⁰ Although Comcast, elsewhere in its comments, urges the Commission to develop a contribution mechanism that is “administratively simple,”³¹ it appears to overlook the substantial costs and burdens associated with this aspect of its own proposal. In the end, PCIA submits that Comcast’s proposal simply would not be worth the sizable price tag.

²⁹ Omnipoint Comments at 4; *see also* Ameritech Comments at 3.

³⁰ Nextel Comments at 8.

³¹ Comcast Comments at 13.

II. CONCLUSION

In summary, PCIA urges the Commission to develop a longer-term methodology for assessing wireless carriers' universal service contributions relying on an administratively simple mechanism that carriers may use on a truly optional basis.

Respectfully submitted,

**THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

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